

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COLUMBIA GAS OF KENTUCKY, INC.)	
PETITIONER)	
)	
VS.)	CASE NO. 91-138
)	
KENTUCKY-OHIO GAS COMPANY)	
RESPONDENT)	

O R D E R

On April 26, 1991, Columbia Gas of Kentucky, Inc. ("Columbia") filed a complaint against Kentucky-Ohio Gas Company ("KOG") alleging KOG had physically bypassed Columbia's service to Ashland Oil Company ("Ashland") in violation of the Commission's Order in Administrative Case No. 297.¹ In its answer filed May 23, 1991, KOG denied Columbia's allegations that its service to Ashland was in violation of Administrative Case No. 297. Columbia filed a supplemental complaint on June 7, 1991, claiming that KOG continued to demonstrate its intention of bypassing Columbia further by contacting existing Columbia customers about a proposed bypassing pipeline "loop." In that filing, Columbia asked that the Commission declare KOG's continued contact with Columbia customers to be a violation of Administrative Case No. 297. Also, on June 7, 1991, Columbia filed a motion requesting the Commission

¹ Administrative Case No. 297, An Investigation of Kentucky Regulation in Light of FERC Rulemaking, Order dated May 29, 1987.

order KOG to cease all bypass-related activity until KOG had applied for and been granted a Certificate of Public Convenience and Necessity. A hearing was held to address these issues on July 12, 1991.

Subsequently, on August 19, 1991, KOG filed a request for a declaration of status as a local distribution company docketed as Commission Case No. 91-301.² Columbia requested, and was granted, full intervention in that proceeding. On October 31, 1991, the Commission issued an Order consolidating Case No. 91-301 with the instant proceeding.

After consideration of the record in this case and being otherwise sufficiently advised, the Commission finds that service by KOG to Ashland does constitute a physical bypass within the definition set forth in Administrative Case No. 297, and KOG should be required to immediately cease serving Ashland until such time as it applies for and is granted a Certificate of Public Convenience and Necessity. The Commission's findings are based upon the following:

In its October 23, 1987 Order in Administrative Case No. 297, the Commission found that bypass operations which were in existence at the time of the Order would not require an application for a Certificate of Public Convenience and Necessity if those facilities were in full use and operation as of May 29,

² Case No. 91-301, The Petition of the Kentucky-Ohio Gas Company For a Determination of Its Status as a Natural Gas Distribution Utility, Order dated October 31, 1991.

1987. The Commission found it appropriate to require entities with existing bypass operations in full use and operation as of that date to file all rates, system maps, and a description of those operations with the Commission. The Commission further directed that a Certificate of Public Convenience and Necessity would not be required until such time as the present bypass agreements had been terminated. Applying those findings and orders to the instant case, the Commission finds that KOG's original service to Ashland was grandfathered by Administrative Case No. 297. An executed contract for sales service to Ashland effective May 1, 1987 existed at the date of the issuance of the Order. KOG, however, was in violation of ordering paragraph 4 of the Commission's Order on rehearing in Administrative Case No. 297 dated October 23, 1987, which directed all entities with existing bypass operations to file rates, system maps, and a description of operations with the Commission.

Entities which had grandfathered bypass operations were not required to have a Certificate of Public Convenience and Necessity until the agreements under which they provided the grandfathered bypass service had terminated. It is apparent from the record that the service provided by KOG to Ashland was not continuous. In fact, KOG and Ashland entered into a new lease agreement in August 1990 following a period of over two years during which KOG was in bankruptcy and provided no service to Ashland. KOG should have applied for a Certificate of Public Convenience and Necessity prior to recommencing service to Ashland pursuant to the August 1990 agreement. Because KOG made no such application, its service

to Ashland is in violation of the Commission's October 23, 1987 Order in Administrative Case No. 297, ordering paragraph number 4. Therefore, Columbia's motion for an Order to cease should be granted to the extent that KOG should cease its service to Ashland effective immediately.

KOG's request for status as a local distribution company should and will be approved in this Order. From the record produced at the hearing in the instant proceeding and KOG's petition of August 19, 1991, the scope and extent to which KOG provides natural gas service to the public for compensation qualifies KOG for local distribution status. The Commission notes that the approval of such status does not exempt KOG from any Commission Orders in Administrative Case No. 297 regarding bypassing entities.

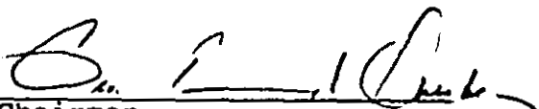
IT IS THEREFORE ORDERED that:

1. KOG is hereby declared to be a local distribution company. Within 30 days of the date of this Order, KOG shall file its rates, tariffs, and all conditions of service with the Commission.

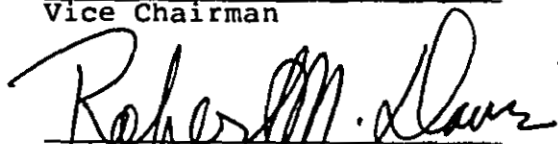
2. Columbia's motion for an Order to cease is granted to the extent that KOG shall immediately cease serving Ashland and shall not recommence service to Ashland unless and until it has received a Certificate of Public Convenience and Necessity from this Commission. KOG shall, within 20 days of the date of this Order, certify to this Commission that it has complied with this ordering paragraph.

Done at Frankfort, Kentucky, this 18th day of December, 1991.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ATTEST:


Executive Director